IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 27.11.2007

CORAM:

The Honourable Mr.Justice S.TAMILVANAN

A.S.No.267 of 1996

1.Tamil Nadu Electricity Board,
rep. By its Chairman,
Anna Salai, Chennai.

2.The Superintending Engineer,
South Arcot Electricity Distribution
System(South), Operation &
Maintenance,
TamilNadu Electricity Board,
Cuddalore,
South Arcot District.

3.The Executive Engineer,
Operation & Maintenance,
Tamil Nadu Electricity Board,
Chidambaram.

4.The Assistant Executive Engineer,
Operation & Maintenance,
Tamil Nadu Electricity Board,
Sethiathoppu.

... Appellants/Defendants

-vs-

1.Thangaraju
2.Muniammal ... Respondent/Plaintiff

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Appeal is filed under Section 96 of C.P.C. against the judgment and decree dated 08.09.1995 made in O.S.No.113 of 1992 on the file of Subordinate Judge, Chidambaram.

For Appellants : Mr.N.Muthuswami, TNEB
For Respondents : Mr.Vedavallikumar

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JUDGMENT

This appeal has been preferred against the judgment and decree dated dated 08.09.1995 made in O.S.No.113 of 1992 on the file of Subordinate Judge, Chidambaram.

2.The appellants herein were the defendants in the suit before the Trial Court. The case of the respondent/plaintiff is that on 11.03.1990 at about 8.00p.m., their daughter Vasanthi, who was studying, 6th standard, died due to the broken down of electric post in the village. It is not in dispute that Vasanthi, the minor daughter of the respondents had died on 11.03.1990, on account of the falling of a damaged electric post, while the girl was worshiping the goddess, Kannaiamman Deity in a procession at Chinnanagaram colony. When the Deity of the goddess was taken out in a procession, the minor girl was standing nearby the electrical post. While, the procession was carring the Deity at a turning, a small wooden post used for carrying the Deity had touched the electric post and the electric post which was already in a damaged condition, got broken down and fell down on the minor girl and hit her, due to which, she died on the spot.

3. According to the respondents, the accident had taken place only due to negligence of the employees of the Tamil Nadu Electricity Board, since the electric post was not properly maintained in a good condition. The respondents herein have further stated that most of the electric post in the said colony were in a very bad condition and inspite of the representation and complaints made before the officials of the appellants, no action was taken by them to replace the old electric post, which were endangering human life. The respondents have further stated that the deceased was their only daughter and they have no other issues and that the second respondent had also underwent a family planning operation on 16.09.1995 at the Government Hospital, Chidambaram and therefore, she could not have any issues in future. Due to the death of their only daughter, the respondents have sustained irreparable loss and also mental agony.

4. As there was no response from the appellants inspite of the representation made by the respondents, they issued a legal notice and then filed the suit, before the Trial Court seeking compensation of Rs.1,00,000/- to be paid by the appellants herein, with 12% interest and costs for the loss sustained by the respondents due to the death of their daughter.

5.In the written statement filed by the appellants herein, as defendants before the Trial Court, the death of Vasanthi, daughter of the respondents on 11.03.1990, has not been disputed. According to the appellants herein, on 11.03.1990 at about 8.30p.m., on account of 'Masimagam' festival, while the village people carrying the Deity of

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Kanniyamman, in a procession, at a turning print in a very narrow and crowded lane, one of the big logs used for carrying the Deity, forcibly dashed and hit against the electric pole, which resulted in the electric post, being broken down and causing the accident.

6. According to the appellants, negligence has to be attributed against the persons who were carrying out the Deity in the procession and not the appellants. The appellants have also not disputed that the deceased Vasanthi was the only daughter of the respondents, studying 6th standard. However, in the written statement the appellants herein, have also denied the allegation that the electric post was already in a damaged condition due to improper maintenance of the Electricity Board.

7.The Trial Court has framed the following issues:

1)Whether the accident had taken place due to negligence and improper maintenance of the electric post?

2) What relief the plaintiffs are entitled to?

An additional issue was also framed which is as follows:

Whether the suit is bad for non-joinder of necessary parties?

8.The Trial Court considering the oral and documentary evidence and also the arguments advanced by both sides, answered all the issues in favour of the respondents/plaintiffs and partly allowed the suit, directing the appellants/defendants to pay Rs.65,000/- as total compensation to the respondents with 12% interest from the date of filing of the suit with costs. According to the second respondent/P.W.1, on 11.03.1990, at about 8.00p.m. his daughter Vasanthi died only due to the falling down of the broken electric post, while she was standing nearby the said post during the Kanniamman Koil festival. According to him, the electric post had been found in a damaged condition even prior to the accident. As per the evidence of P.W.4, Village Administrative Officer, many of the electric posts, in the village were found in a damaged condition and due to the breaking of cement portion, iron rods could be seen inside the posts. P.W.2, who had been the Panchayat President and P.W.3, a resident of the said village, who participated in the village festival have also deposed similar evidence fixing the negligence on the appellants/defendants that the electric post in the village was not properly maintained.

9. A, Grade-I Police Constable attached to Sethiyathope Police Station was examined as P.W.5 and through him, the case records in

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Crime No.118/90 on the file of the Sethiyathope Police Station, relating to O.S.No.113 of 1992 had been produced before the Trial Court. An Assistant Engineer of Tamil Nadu Electricity Board, attached to Sethiyathope sub-station was examined as D.W.1. He has not denied the death of Vasanthi, daughter of the respondents herein, on account of the electric post fallen down on the minor girl.

10. The certified copy of the First Information Report registered on 11.03.1990 by Sethiyathope Police Station in Crime No.118 of 1990, under Section 337 and 304(a) IPC, has been marked as Ex.A1. As per this First Information Report, the case was registered on account of the death of Vasanthi aged about nine years, died due to the accident of electric post fallen down on the girl. Even in Ex.A4, the deceased minor girl is stated as daughter of the respondents. Ex.A2 is the certificate issued by Civil Surgeon, Government Hospital, whereby it is certified that the second respondent Muniyammal had underwent laproscopic operation on 16.09.1995. The Xerox copy of the record sheet relating to Vasanthi, issued by the Head Master, R.C.School, Chinna Nerkundram has been marked as Ex.A3, wherein the date of birth of the deceased girl Vasanthi is stated as 01.09.1981. A copy of the legal notice issued by the respondents has been marked as Ex.A4 and the postal acknowledgments are marked as Exs.A5 to A8. Ex.A9 is the copy of the Postmortem Certificate of Vasanthi, aged about nine years.

11.The oral and documentary evidence adduced by the respondents/plaintiffs would clearly establish that the accident had taken place due to the improper maintenance of the electric post by the appellants and due to the accident the minor girl died.

12. On the facts and circumstances, this Court is of the view that there is no legally acceptable defence available on the side of the appellants, to allow this appeal. Though the appellants had denied the relationship of the respondents with the deceased Vasanthi, in the written statement, the said relationship has been established by way of oral and documentary evidence. The evidence available on record would clearly establish the fact that the electric post was broken and fallen down on the nine year old girl, Vasanthi, and caused her death, since the electric post had been in a damaged condition, as stated by the respondents herein. The Trial Court has awarded only a minimum amount of Rs.65,000/- as compensation to be paid to the respondents with 12% interest and costs. However, there is no cross appeal by the respondents.

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13.In the aforesaid circumstances, I could find no error or infirmity in the impugned judgment and decree rendered by the Court below, to be interfered with in favour of the appellants. Hence, this appeal fails. In the result, confirming the judgment and decree passed by the Court below, this appeal is dismissed with costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Smi

To,

1. The Subordinate Judge, Chidambaram.

2.The Record Keeper, V.R.Section, High Court, Madras

+1cc to Mrs. Vedavallikumar, Advocate Sr 70150

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km/10.6.

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